

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	Docket No. CAA-5- 2000-018
)	
LTV Steel Company, Inc.,)	Proceeding to Assess a Civil
LTV Lime Plant)	Penalty under
Grand River, Ohio)	Section 113(d) of the Clean
)	Air Act,
Respondent.)	42 U.S.C. § 7413(d)
_____)	

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is LTV Steel Company, Inc., LTV Lime Plant (LTV), a corporation doing business in Ohio.

Statutory and Regulatory Background

4. On May 27, 1994, U.S. EPA approved most of Ohio Administrative Code (OAC) Rule 3745-17 (particulate matter standards), including OAC Rule 17-07, as part of the federally enforceable state implementation plan (SIP) for Ohio. 59 Fed. Reg. 27464 (May 27, 1994).

5. OAC 3745-17-07(A)(1) sets limits on the visible particulate emissions from all industrial sources. Specifically, OAC 3745-17-07(A)(1) requires that, except as otherwise specified, visible particulate emissions from any stack not

exceed 20 percent opacity, as a 6-minute average, more than once in any 60-minute period, and not exceed 60 percent opacity, as a 6-minute average, at any time.

6. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for SIP violations that occurred prior to January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1). The Debt Collections Improvements Act of 1996 increased the statutory maximum penalty to \$27,500 per day of violation up to a total of \$220,000 for SIP violations that occurred on or after January 31, 1997. 31 U.S.C. § 3701 and 40 C.F.R. Part 19.

7. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

8. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

9. The Respondent is LTV Steel Company, Inc., which is and was at all times relevant to this complaint, a corporation incorporated under the laws of New Jersey, and the owner and operator of a lime manufacturing facility located at 15 Williams Street, Grand River, Ohio (the facility).

10. LTV is a "person" as defined at 42 U.S.C. § 7602(e) and at OAC 3745-15-01(U).

11. As part of the lime manufacturing process at the facility, Respondent releases exhaust gas containing lime dust to the atmosphere via a smokestack.

12. Respondent releases "particulate matter," as defined at OAC 3745-17-01(B)(12), which is an "air pollutant," as defined at OAC 3745-15-01(C).

13. Respondent produces "emissions," as defined at OAC 3745-15-01(N).

14. The emissions produced at the facility are conducted through a "stack," as defined at OAC 3745-17-01(B)(19).

15. The visible particulate matter emissions standard at OAC 3745-17-07(A)(1) applies to the emissions from the stack at the facility.

Count I

16. Complainant incorporates paragraphs 1 through 15 of this complaint, as if set forth in this paragraph.

17. OAC 3745-17-07(A) (1) requires that, except as otherwise specified, visible particulate emissions from any stack not exceed 20 percent opacity, as a 6-minute average, more than once in any 60-minute period, and not exceed 60 percent opacity, as a 6-minute average, at any time.

18. The opacity of the emissions from the stack at Respondent's facility exceeded 20 percent, as a 6-minute average, more than once in a 60-minute period on numerous occasions during the past five years. Attachment 1 summarizes Respondent's exceedances of the 20 percent opacity limit.

19. Each time Respondent failed to prevent the opacity of visible particulate emissions from this facility from exceeding 20 percent, as a 6-minute average, more than once in any 60-minute period constitutes a violation of OAC 3745-17-07(A) (1).

20. The opacity of the emissions from the stack at Respondent's facility exceeded 60 percent, as a 6-minute average, on numerous occasions during the past five years. Attachment 1 summarizes Respondent's exceedances of the 60 percent opacity limit.

21. Each time Respondent failed to prevent the opacity of visible particulate emissions from this facility from exceeding 60 percent, as a 6-minute average, constitutes a violation of OAC 3745-17-07(A) (1).

22. On December 30, 1998, U.S. EPA issued a notice of violation to LTV for violations of OAC 3745-17-07(A)(1) that had occurred since December 1995.

23. February 11, 1999, U.S. EPA and LTV held a conference to discuss the December 30, 1998, notice of violation.

24. October 22, 1999, U.S. EPA issued a second notice of violation to LTV for violations of the Ohio SIP regulation OAC 3745-17-07(A)(1), extending the period of violations to January 1995.

25. On December 8, 1999, U.S. EPA and LTV held a conference to discuss the October 22, 1999, notice of violation.

Proposed Civil Penalty

26. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

27. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$95,175. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

28. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

29. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 64 Fed. Reg. 40138 (1999) (to be codified at 40 C.F.R. Part 22) govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

30. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (R-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

31. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Ann Coyle to

receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Coyle at (312) 886-2248. Ms. Coyle's address is:

Ann Coyle (C-14J)
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Penalty Payment

32. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Ann Coyle and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590.

Opportunity to Request a Hearing

33. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator

proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 34 through 39 below.

Answer

34. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 30, above, and must serve copies of the written answer on the other parties.

35. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

36. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the

complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

37. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

38. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 33 above.

39. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

40. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to


discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Ann Coyle at the address or phone number specified in paragraph 31, above.

41. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

42. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

9-29-00
Date


Bharat Mathur, Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number _____ to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" at 64 Fed. Reg. 40138 (1999) (to be codified at 40 C.F.R. Part 22), and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Mr. Thaddeus A. Zalenski
Assistant General Counsel
LTV Steel Company, Inc.
200 Public Square
Cleveland, Ohio 44114-2308

on the 29th day of Sept, 2000.


Loretta Shaffer
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: P 140 897 050